

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of HOLLIS W. BYRD and U. S. POSTAL SERVICE,  
POST OFFICE, Copell, Tex.

*Docket No. 96-2294; Submitted on the Record;  
Issued July 20, 1998*

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DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,  
BRADLEY T. KNOTT

The issue is whether appellant has established that he sustained a recurrence of disability on or after May 2, 1996 causally related to his November 30, 1993 employment injury.

On November 30, 1993 appellant, then a 44-year-old custodian, filed a claim for compensation alleging that on that day he sustained an injury to his left knee while in the performance of duty. The Office of Workers' Compensation Programs accepted appellant's claim for left knee strain, medial meniscus tear and authorized arthroscopic surgery, which was performed on April 28, 1994. Appellant returned to a limited-duty position on July 12, 1994.

On May 13, 1996 appellant filed a notice of recurrence of disability (Form CA-2a) commencing May 2, 1996. The circumstances of the recurrence of disability were described by appellant as "day-to-day pain" when walking or bending, noting escalating pain "for the last two to three weeks." The Office denied appellant's claim by decision dated July 1, 1996.

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence, a recurrence of total disability and to show that he or she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.<sup>1</sup>

In the present case, Dr. Scott O. Paschal, appellant's treating physician and a Board-certified orthopedic surgeon, stated in a medical report received by the Office on May 5, 1996 that he had examined appellant on February 27, 1996 and noted appellant's statement that he had reaggravated his knee pain. Dr. Paschal stated that appellant had a degenerative condition and

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<sup>1</sup> *Gus N. Rhodes*, 46 ECAB 518 (1995).

that he was “predisposed to recurrences of his knee discomfort.” In a medical report received on May 23, 1996, Dr. Paschal stated that he had examined appellant on May 14, 1996 and noted his statement that he had “markedly reaggravated his knee from his job.” Appellant also submitted a June 4, 1996 attending physician’s report, from Dr. Paschal who noted that appellant’s meniscus tear required a permanent light-duty assignment. However, in none of his reports did Dr. Pascal provide an opinion as to the causal relationship between appellant’s claimed May 2, 1996 recurrence of disability and his November 30, 1993 employment injury. As noted above, it is appellant’s burden to submit sufficient medical evidence to establish an employment-related recurrence of disability. The medical evidence of record is not sufficient to meet appellant’s burden.

The decision of the Office of Workers’ Compensation Programs dated July 1, 1996 is affirmed.<sup>2</sup>

Dated, Washington, D.C.  
July 20, 1998

George E. Rivers  
Member

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member

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<sup>2</sup> Following the issuance of the Office’s July 1, 1996 decision, appellant submitted additional evidence. The Board may not review evidence for the first time on appeal that was not before the Board at the time it issued the last decision in the case. 20 C.F.R. § 501.(2)(c).